

FILED

SEP 24 2010

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA

No. 09-0156¹

DANIEL P. MASSEY,
Bar No. 006089

DISCIPLINARY COMMISSION
REPORT

RESPONDENT.

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 11, 2010, pursuant to Rules 56 and 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed July 6, 2010, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for censure, two years of probation with the State Bar's Law Office Management Assistance Program ("LOMAP") evaluation and costs.

Decision

Having found no facts clearly erroneous, the seven members² of the Disciplinary Commission unanimously accept the Hearing Officer's findings of fact, conclusion of law, and recommendation for censure, two years of probation (LOMAP evaluation) and costs of

¹ An Order severing this matter from *Matter of Finley*, companion File No. 09-0157 was filed on May 20, 2010 and two separate reports were filed by Hearing Officer 6T.

² Commissioners Houle and Horsley did not participate in these proceedings.

1 these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's
2 office.³ The terms of probation are as follows:

3 **Terms of Probation**

4 1. The probation will begin when the final judgment and order is entered and
5 shall terminate two years from the date that the LOMAP agreement is signed.⁴

6 2. Respondent Massey shall participate in a complete LOMAP evaluation and
7 comply with all of the recommendations made based the LOMAP evaluation.

8 3. In the event that Respondent fails to comply with any of the foregoing
9 conditions, and the State Bar receives information thereof, bar counsel shall file with the
10 imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct.
11 The imposing entity may refer the matter to a hearing officer to conduct a hearing at the
12 earliest practicable date, but in no event later than 30 days after receipt of notice, to
13 determine whether the terms of probation have been breached and, if so, to recommend
14 appropriate action and response. If there is an allegation that Respondent failed to comply
15 with any of the foregoing terms, the State Bar of Arizona bears the burden to prove non-
16 compliance by a preponderance of the evidence.

17 RESPECTFULLY SUBMITTED this 24th day of September, 2010.

18
19 Pamela M. Katzenberg/jms
20 Pamela M. Katzenberg, Chair
21 Disciplinary Commission

22 Original filed with the Disciplinary Clerk
23 this 24th day of September, 2010.

24 ³ A copy of the Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total
25 \$1,200.00.

26 ⁴ The Commission notes that Rule 60(a)(5)(A) provides that probation shall be imposed for a
specific period not in excess of two years but may be renewed for an additional two years.

Copy of the foregoing mailed
this 24 day of September, 2010, to:

1 Hon. Michael O. Wilkinson
2 Hearing Officer 6T
3 1244 W. Solano Drive
4 Phoenix, AZ 85013

4 J. Scott Rhodes
5 Respondent's Counsel
6 *Jennings, Strouss & Salmon*
7 One East Washington, Suite 1900
8 Phoenix, AZ 85004-2554

7 Shauna R. Miller
8 Senior Bar Counsel
9 State Bar of Arizona
10 4201 North 24th Street, Suite 200
11 Phoenix, AZ 85016-6288

11 by: Loretta Diaz

12 /mps
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT

A

BEFORE A HEARING OFFICER OF
OF THE SUPREME COURT OF ARIZONA

FILED

JUL 06 2010

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY [Signature]

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

No. 09-0156

DANIEL P. MASSEY,
Bar No. 006089

RESPONDENT.

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The State Bar of Arizona filed an Amended Complaint in this matter on December 4, 2009. Mr. Massey filed his Answer on January 5, 2010. An Initial Case Management Conference was held on January 19, 2010. On March 10th the parties filed a Notice of Settlement. A Hearing on the Tender of Admissions And Agreement For Discipline By Consent was held on May 3rd, 2010.

FINDINGS OF FACT

1. Daniel P. Massey ("Respondent Massey") was admitted to practice as a lawyer in Arizona on December 20, 1979.
2. Respondents Massey and Finley are equal shareholders in Massey & Finley P.C. (the Firm).

COUNT ONE

3. The firm represented Hans Mueller ("Mr. Mueller") in connection with injuries Mr. Mueller sustained while he was detained in an INS facility located in Florence, Arizona. The INS facility was being run at the time by Correction Corporations of America ("CCA").

4. Following Mr. Mueller's detention in the INS facility, he was deported to his native country of Germany.

5. After his deportation to Germany, Mr. Mueller's close friend, Joan Walter discussed the injuries Mr. Mueller sustained while he was detained in an INS facility with Mr. Mueller's ex Father-in-law, William Stanfield.

6. On information and belief, Mr. Stanfield, a former senior partner of the firm Stanfield & McCarville, discussed the matter with Mr. Mueller by telephone, and assured Mr. Mueller he had a well-documented case that had a high chance of success.

7. On information and belief, Mr. Mueller also discussed his injuries in the matter in which he was mistreated while being detained in the INS facility with attorney A. Thomas Cole, an acquaintance of his in Arizona.

8. At the time, Mr. Cole was the owner of an office building located in Casa Grande in which the Firm was a tenant.

9. Mr. Cole recommended that Mr. Mueller contact the Firm to discuss possible legal action for his injuries.

10. On information and belief, Mr. Mueller subsequently had Ms. Walter contact the Firm regarding Mr. Mueller's injuries.

11. In or around July 2003, Ms. Walter met with Respondent Massey and gave him copies of some documents related to Mr. Mueller's claims. Respondent Massey told Ms. Walter he would need a few days to familiarize itself with the documentation.

12. A few days later, Respondent Massey told Ms. Walter the Firm would represent Mr. Mueller for a fee of \$30,000 and that Mr. Mueller should contact him.

13. Mr. Mueller called Respondent Massey, a call to which Respondent Finley was not a party. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that he and Respondent Massey discussed the following:

- a. the case would be drawn out over a fairly long period of time,
- b. Respondent Massey believed that Mr. Mueller's chances of receiving some restitution appeared to be good,
- c. Respondent Massey assured Mr. Mueller the Firm was qualified to handle his case,
- d. Respondent Massey told Mr. Mueller to call back later and ask for the paralegal assigned to his case.

14. The Firm would contact Mr. Mueller only when necessary since communication would be expensive and difficult due to the time difference between Phoenix and Germany.

15. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that he called approximately one week later and was connected with Andy Carp, a paralegal at the Firm and that he provided Mr. Carp with all the pertinent information about his case. Mr. Carp told Mr. Mueller he would be contacted by telephone, e-mail or mail as the need arose.

16. A Legal Representation Agreement (the "fee agreement") was mailed to Mr. Mueller under a cover letter dated July 8, 2003. The \$30,000 fee was documented in the fee agreement along with the scope of the representation.

17. Mr. Mueller signed the fee agreement on July 18, 2003, and returned it to the Firm along with the \$30,000 fee. Respondent Massey signed the fee agreement on September 1, 2003.

18. On September 8, 2004, approximately fourteen (14)months later, the Firm filed a lawsuit against CCA, Case No. CV 2004 - 01051. Jones, Skelton & Hochuli, P.L.C. ("Jones Skelton") defended CCA.

19. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that he promptly provided all information requested by the Firm, including answers to Defendant's discovery and requests for information about his case. Respondent would present evidence rebutting Mr. Mueller's testimony. For the purposes of the tender of admissions, the parties agree that the extent to which Mr. Mueller did, or did not, cooperate with the Firm is not relevant to the outcome of this case.

20. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that neither Respondent Massey nor Respondent Finley, nor anyone else from the Firm, ever telephoned or e-mailed him regarding his case or to request additional information from him, except for an August 15, 2005, letter from Respondent Finley. Mr. Mueller would further testify that this letter was the sole communication from the Firm to Mr. Mueller regarding any need for additional information in response to discovery requests. If this case were to go to a contested hearing, Respondent would present evidence rebutting Mr. Mueller's testimony; however, Respondent would admit that communications with Mr. Mueller were inadequate.

21. During the representation of Mr. Mueller, specifically on June 20, 2005, Respondent Finley received an Informal Reprimand for violation of ER's 1.2, 1.3, 1.4, 8.4(d) and began a one-year term of Probation on August 20, 2005.

22. Respondent generally knew that Respondent Finley had been the object of some form of State Bar action that included a review of Respondent Finley's practice habits. Believing that he had no duty to do so, Respondent Massey did not inquire into the specific nature of Respondent Finley's State Bar action and, therefore, he was unaware of the specific requirements of Respondent Finley's probation. For purposes of the Tender of Admissions, Respondent Massey admits that, as a result of not inquiring into the exact nature and terms of Respondent Finley's probation, he negligently failed to make reasonable efforts to ensure that the Firm had in effect measures to give reasonable assurance that respondent Finley's conduct in this matter conformed to the Rules of Professional Conduct.

23. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that neither Respondent Massey nor Respondent Finley informed him of any problems in the litigation process or any difficulty in timely responding to discovery requests. Respondent Massey would testify that he believed that Respondent Finley had engaged in such communication, and Respondent Massey understands that Respondent Finley would testify that he did engage in such communication.

24. On or about October 28, 2005, Jones Skelton filed Defendant's Motion to Dismiss or in the alternative Motion for Summary Judgment ("Motion to Dismiss") and mailed a copy to Respondent Finley.

25. Neither Respondent Massey nor Respondent Finley responded to the Motion to Dismiss despite Respondent Finley asking for and being granted an extension until November 21, 2005, to file the Response.

26. On or about December 2, 2005, Jones Skelton filed a Request for Summary Disposition regarding Motion to Dismiss or the alternative Motion for Summary Judgment and mailed a copy of this motion to the Firm.

27. The Firm did not respond to the Motion for Summary Disposition.

28. On or about January 6, 2005, Judge William J. O'Neil, the Pinal County Superior Court, signed an order granting defendant's Motion to Dismiss and a copy was mailed to Respondent Finley.

29. On or about January 23, 2006, Jones Skelton filed a Notice of Lodging of Proposed Judgment and mailed a copy along with the Proposed Judgment to Respondent Massey.

30. On January 27, 2006, the Court mailed a copy of a Judgment/Order Lodged to Respondent Massey to show for the record that a formal proposed judgment dismissing all claims against CCA was lodged with the Court and notifying Respondent Massey that if no objection was filed within the time provided by the Rules of Civil Procedure, the order would be signed by the Judge and filed.

31. The Firm did not file an objection to the Proposed Form of Judgment.

32. On or about February 13, 2006, Judge O'Neil signed the Proposed Form of Judgment and a copy was mailed to Respondent Massey.

33. On or about February 28, 2006, the Firm filed Plaintiff's Rule 59 Motion for New Trial and Rule 60 Motion for Relief from Judgment under Respondent Massey's signature ("Motion for New Trial").

34. In the Motion for New Trial, the Firm argued that because of the Firm's difficulty in communicating with Mr. Mueller they were unable to respond to the Motion to Dismiss and also stated, " Plaintiff is filing this Motion in order to stay the running of the time for appeal, and anticipates supplementing this Motion within the next forty-eight hours."

35. The Firm did not file such a supplement.

36. Jones Skelton's response to the Motion for New Trial was filed on or about March 20, 2006, and detailed a lack of prosecution by the Firm and its failure to respond to discovery requests, correspondence and dispositive motions.

37. The Firm did not file a reply to defendant's Response to the Motion for New Trial.

38. On or about May 8, 2006, the Court entered an order denying Plaintiff's Motion for New Trial.

39. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that, in or around November 2006, Mr. Mueller called the Firm and learned for the first time that his case was dismissed. This was approximately ten months after Defendant's Motion to Dismiss was granted and six months after the Motion for New Trial was denied. Respondent Massey would testify that Mr. Mueller did not call him. He understands that Respondent Finley would testify that Mr. Mueller's portrayal of the conversation is inaccurate.

40. During this call, Mr. Mueller was told to telephone Respondent Finley a few days later to discuss his case, which he did.

41. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that, during this telephone call, Respondent Finley knowingly misrepresented to him that his case had been dismissed because the judge did not want to hear his case, in order to hide the Firm's

misconduct in allowing Mr. Mueller's case to be dismissed. Respondent Massey would testify that he has no personal knowledge of the substance of said telephone conference.

42. If this matter were to proceed to a hearing, Mr. Mueller would testify that Respondent Finley further misled him by falsely telling him that they were still actively working his case with the goal of appealing the dismissal, when the Motion for New Trial had already been denied. Respondent Finley told Mr. Mueller to contact him in approximately three months to check the status of his case. Respondent Massey would testify that he has no personal knowledge of the substance of said telephone conference.

43. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that Respondent Finley did not tell him during the November 2006 conversation about Defendant's Motion to Dismiss or Respondent Massey's Motion for New Trial. Respondent Massey would testify he has no personal knowledge of the substance of said telephone conference.

44. If this matter were to proceed to a hearing, Mr. Mueller would testify that, during this call, he asked Respondent Finley about his \$30,000 fee and that Respondent Finley falsely assured him that the Firm was working on his case. Respondent Massey would testify that he has no personal knowledge of the substance of said telephone conference.

45. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that, as a result of his November 2006 telephone conversation with Respondent Finley, he believed Respondent Massey and Respondent Finley were still working on his case. Respondent Massey would testify that he has no personal knowledge of Mr. Mueller's belief or whether it was reasonable.

46. On or about March 27, 2007, Mr. Mueller called Respondent Finley. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that during this telephone call,

Respondent Finley informed him that the Firm had decided they would no longer handle his case or his appeal of the Court's dismissal. Mr. Mueller would also claim that Respondent Finley also asked that Mr. Mueller not contact him again regarding his case. Respondent Massey would testify that he has no personal knowledge of the substance of said telephone conference.

47. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that, when he asked Respondent Finley what had happened on his case, Mr. Finley refused to provide any information and simply told Mr. Mueller that they were no longer his attorneys. Respondent Massey would testify that he has no personal knowledge of the substance of said telephone conference.

48. During this call, Mr. Mueller asked Respondent Finley what happened to his \$30,000 fee. Respondent Massey would testify that he has no personal knowledge of the substance of said telephone conference.

49. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that Respondent Finley told him that he would be receiving an approximately \$10,000 refund, but failed to provide an explanation for the approximately \$20,000 in charges. Respondent Massey would testify he has no personal knowledge of the substance said telephone conference.

50. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that Respondent Finley also told him to contact him only by e-mail regarding the return of his retainer. Accordingly, Mr. Mueller provided his banking information via a March 27, 2007 e-mail to respondent Finley. Respondent Massey would testify that he has no personal knowledge of the substance of said telephone conference.

51. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that, by June 2007, he still had not received the \$10,000 and had not received any communication

from Respondents Massey and Findley. As a result, Mr. Mueller sent an e-mail to Respondent Finley confirming their prior conversations and again asking for return of the \$10,000. He again provided his banking information. Respondent Massey would testify that he was unaware of said e-mail.

52. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that, on July 6, 2007, he delivered both an e-mail and letter to Respondent Finley expressing his frustration that he had still not received the \$10,000 and recounting the history of his case. Respondent Massey would testify that he was unaware of said letter.

53. In the July 6, 2007 letter, Mr. Mueller confirmed statements that he believed were made to him by Respondent Finley during their November 2006 at March 27, 2007 telephone calls and demanded that he receive the \$10,000 within "10 working days".

54. On August 6, 2007, after another month had passed, Mr. Mueller again provided his banking information to Respondents Massey and Finley in an e-mail to Firm employee Donna Goetzenberger.

55. On August 20, 2007, the Firm wired Mr. Mueller the \$10,000.

56. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that it was only after he retained a new attorney, who then obtained a copy of the Court file from the Pinal County Superior Court, that Mr. Mueller began to understand the extent to which he believes he was misinformed about his case and how it came to be dismissed. Respondent Massey would testify that he has no personal knowledge of Mr. Mueller's conduct in this regard.

57. On August 20, 2008, Mr. Mueller's new attorney sent a letter to Respondent Massey requesting a copy of Mr. Mueller's file and a detailed billing statement showing time and

amounts billed to his matter and the basis for keeping approximately \$20,000 of Mr. Mueller's \$30,000 fee.

58. Two days later, Respondent Massey delivered a letter and box of documents to Mr. Mueller's new attorney. His letter stated "[t]he file includes all of our correspondence, e-mails, attorney notes, etc. etc." However no billing statement or explanation of charges was provided.

59. If this matter were to proceed to a contested hearing, Mr. Mueller would testify that as a result of the Respondents Massey and Finley's unethical conduct, he is barred from pursuing his cause of action against CCA and has suffered damages as a result. Respondent Massey would testify that Mr. Mueller's case turned out to be merit less because Mr. Mueller could not or would not deliver documents that he had claimed existed and that would establish a causal link necessary to prove his case.

60. Respondent Massey and Respondent Finley, as the only shareholders of the Firm and having comparable managerial authority in the Firm, failed to have in effect measures giving reasonable assurance that all Firm associate lawyers would conform to the Rules of Professional Conduct in violation of ER 5.1 (a), (b) and (c).

61. In addition, some of the above allegations of misconduct are attributed to Firm non-lawyer employees, and Respondent Massey violated ER 5.3 (a), (b) and (c) by failing to adequately supervise such employees.

62. The Firm's failure to respond to discovery requests and dispositive motions resulted in conduct prejudicial to the administration of justice in violation of ER 8.4 (d).

CONDITIONAL ADMISSIONS

Respondent conditionally admits that his conduct, as set forth above, violated Rule 42, ERs 5.1, 5.3, and 8.4 (d), Ariz. R. Sup. Ct.

Respondent's admissions are being tendered in exchange for the form of discipline stated below.

CONDITIONAL DISMISSALS

The State Bar conditionally agrees to dismiss alleged violations of Rule 42, ERs 1.3, 1.4(a) and (b), 1.15(d), 1.16(d), 3.2 and 3.3(a), Ariz. R. Sup. Ct. The State Bar conditionally agrees to dismiss these alleged violations as Respondent Finley was the person in charge of moving the case forward, so these violations have been covered in Respondent Finley's consent documents.

CONCLUSIONS OF LAW

Respondent Massey's conduct violated Rule 42, Ariz. R. Sup. Ct., ERs 5.1, 5.3, and 8.4(d). He failed to have measures in place to ensure that all lawyer and non-lawyer staff behaved in accordance with the Rules of Professional Conduct, and engaged in conduct that is prejudicial to the administration of justice.

RESTITUTION

The Hearing Officer agrees with the State Bar and Respondent Massey that restitution is not an issue in this matter. The Firm returned the \$30,000 to Mr. Mueller.

ABA STANDARDS

In determining the appropriate sanction the Hearing Officer has considered the American Bar Association's Standards for Imposing Lawyer Sanctions ("Standards") and Arizona case law. The Standards provide guidance with respect to an appropriate sanction in this matter. The Supreme Court and Disciplinary Commission consider the Standards a suitable guideline. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P. 3rd 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 147, 791 P.2d 1037,1040 (1990).

In determining an appropriate sanction, both the Supreme Court and the Disciplinary Commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; Standard 3.0.

Respondent Massey and his partner were retained to represent Hans Mueller for personal injuries he sustained while detained in an INS facility. Respondent Massey, even though he knew that Respondent Finley was under supervision by the State Bar of Arizona as of August 20, 2005, failed to ensure that Mr. Mueller's case was being handled appropriately by Respondent Finley and the non-lawyer staff. Respondent's mental state was negligent. Accordingly, Standard 7.0 (Other Duties Owed as a Professional) is the appropriate Standard to consider.

Standard 7.3: Censure is generally appropriate when a lawyer negligently engages in conduct that is a violation of the duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.

Additionally, in deciding what sanction to impose, the following aggravating and mitigating circumstances were considered:

Aggravating Factors:

ABA Standard 9.22:

(i) Substantial experience in the practice of law. Respondent has been practicing law in Arizona since 1979.

Mitigating Factors:

ABA Standard 9.32

Subsection (a): Absence of a prior disciplinary record.

Subsection (b): Absence of a dishonest or selfish motive.

Subsection (e): Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

In evaluating the aggravating and mitigating factors, the Hearing Officer does not believe that they justify varying from the presumptive sanction of censure.

PROPORTIONALITY ANALYSIS

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* 208 Ariz. at 61, 90 P.3d at 778 ; *In re Wines* 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983).

In re Laganke, SB-09-0081-D (August 24, 2009). Mr. Laganake failed to have a written fee agreement and failed to adequately supervise his non-lawyer assistant. Mr. Laganke violated ERs 1.3, 1.5, and 5.3. Aggravating factors: 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses and 9.22(i) substantial experience in the practice of law. Mitigating factors: 9.32(a) absence of a prior disciplinary record, 9.32(b) absence of a dishonest or selfish motive and 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Mr. Laganke's mental state was negligent and there was actual or potential injury. He was censured and placed on one year of Probation (LOMAP) with restitution.

In re Struble, SB-09-0062-D (June 30, 2009). Mr. Struble failed to diligently communicate with and represent clients; failed to consult with his client and failed to supervise an associate within his firm, which delayed court proceedings and created additional work for other parties. Mr. Struble violated ERs 1.2, 1.3, 1.4, 3.2, 5.1(b). Aggravating factors: 9.22(d)

multiple offenses, and 9.22(i) substantial experience in the practice of law. Mitigating factors: 9.32(a) absence of a prior disciplinary record and 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. He was censured and placed on one year Probation (LOMAP).

In re Cochran, SB-07-0204-D (January 14, 2008). Mr. Cochran failed to properly manage and supervise other lawyers in the firm and failed to safeguard client property in the firm's possession, resulting in considerable funds being embezzled by his law partner. Mr. Cochran further failed to adhere to trust account rules and guidelines in the overall management of the trust account. Mr. Cochran violated ERs 1.15, 5.1 and Rules 43 and 44. Aggravating factors include: 9.22(a) prior disciplinary offense and (i) substantial experience in the practice of law. Mitigating factors include: 9.32(b) absence of dishonest or selfish motive, (d) timely good faith effort to make restitution, and (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Mr. Cochran's mental state was negligent and there was no actual injury. Mr. Cochran was censured and placed on two years probation (LOMAP/TAEPP), and restitution.

SANCTIONS

The Hearing Officer has considered all of the above and agrees with the parties' agreed sanction.

1. Respondent shall be censured and placed on probation for a period of two years.
2. The probation will begin when the final judgment and order is entered and shall terminate two years from the signing of the LOMAP agreement.
3. Respondent Massey shall participate in a complete LOMAP evaluation and comply with all of the recommendations made based on the evaluation.

4. In the event Respondent fails to comply with any of the terms of probation approved by the Disciplinary Commission and the Supreme Court, and the State Bar receives information about this failure, bar counsel will file a notice of non-compliance with the imposing entity, pursuant to Rule 60(a)(5) Arizona Rules of Supreme Court. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest possible date, but in no event later than 30 days following receipt of the notice, and will determine whether the terms have been breached and, if so, will recommend appropriate actions in response to the breach. The State Bar shall have the burden of proving noncompliance by a preponderance of the evidence.

5. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in this matter. An itemized Statement of Costs and Expenses is attached as exhibit "A" and incorporated herein.

DATED this 6th day of July, 2010.

Hon. Michael O. Wilkinson (L.D.) Amr
Honorable Michael O. Wilkinson
Hearing Officer 6T

Original filed with the Disciplinary Clerk
this 6th day of July, 2010.

Copy of the foregoing mailed
this 7 day of July, 2010, to:

J. Scott Rhodes
Jennings, Strouss & Salmon, PLC
One East Washington Suite 1900
Phoenix, AZ, 85004-2554
Attorney for Respondent

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 200
Phoenix, AZ, 85016-6288

By Deann Barb

/jsa

EXHIBIT “A”

1 **Statement of Costs and Expenses**

2 In the Matter of a Member of the State Bar of Arizona,
3 Daniel P. Massey, Bar No. 006089, Respondent

4 File No(s). 09-0156

5 **Administrative Expenses**

6 The Board of Governors of the State Bar of Arizona with the consent of the
7 Supreme Court of Arizona approved a schedule of general administrative
8 expenses to be assessed in disciplinary proceedings. The administrative
9 expenses were determined to be a reasonable amount for those expenses
10 incurred by the State Bar of Arizona in the processing of a disciplinary matter.
11 * An additional fee of 20% of the general administrative expenses will be
12 assessed for each separate file/complainant that exceeds five, where a violation
13 is admitted or proven.

14 General administrative expenses include, but are not limited to, the following
15 types of expenses incurred or payable by the State Bar of Arizona:
16 administrative time expended by staff bar counsel, paralegals, legal assistants,
17 secretaries, typists, file clerks and messengers; postage charges, telephone
18 costs, normal office supplies, and other expenses normally attributed to office
19 overhead. General administrative expenses do not include such things as travel
20 expenses of State Bar employees, investigator's time, deposition or hearing
21 transcripts, or supplies or items purchased specifically for a particular case.

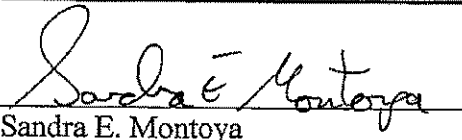
22 *General Administrative Expenses for above-numbered proceedings* = \$1200.00

23 Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary
24 matter, and not included in administrative expenses, are itemized below.

25 **Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges \$0.0

TOTAL COSTS AND EXPENSES INCURRED **\$1,200.00**

23 
24 Sandra E. Montoya

25 Lawyer Regulation Records Manager

4-28-10
Date